

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6578 OF 2012
(Arising out of SLP (Civil) No. 14616/2009)

MOHINDER SINGH & ANR. ..Appellants

Versus

DEV RAJ ..Respondent

O R D E R

Leave granted.

2. The appellants herein have assailed the judgment and order dated 12.2.2009 passed by the High Court of Punjab and Haryana at Chandigarh in RSA No. 800/2005 whereby the Second Appeal at the instance of the plaintiff, respondent herein, was allowed and the judgment and order passed by the trial court as also the first appellate court dismissing the suit of the respondent-plaintiff was set aside.

3. In order to appreciate the controversy between the appellant and the respondent it appears essential to state the relevant factual details of the matter giving rise to this appeal. On 7.6.1985, the plaintiff - respondent herein, purchased a plot of land and came in exclusive possession of the same after which the plaintiff-respondent raised construction on the said plot but in the process also extended construction on the adjoining passage bearing Khasra No. 183/1 which was used as the only passage by the defendants - appellants for ingress and outgress from their plot of land comprised in Khasra Nos. 189, 190 and 191 to the road in village Phirni.

4. As per the case of the defendants -appellants, this passage got blocked in December -January 1995 on account of the extended construction raised by the plaintiff - respondent after he had purchased the plot which gave rise to a serious dispute between the plaintiff - respondent and the defendants -appellants which finally reached to the Police Station Hazipur through the Gram Panchayat. But on 7.1.1996 a compromise got effected in regard to the aforesaid dispute whereby the plaintiff - respondent retained his construction on the passage portion of Khasra No. 183/1 and in order to compensate for this encroachment, 2 marlas in Khasra No. 189 was given by the plaintiff - respondent to the defendants - appellants by way of a bargain and by way of compensation for convenience and usage due to the blocked passage. Thus, the respondent - plaintiff was allowed to retain the construction on the passage portion of Khasra No. 183/1 in lieu of which he had surrendered 2 marlas in Khasra No. 189 in favour of the defendants-appellants herein.

5. Thus, the plaintiff - respondent on the one hand grabbed the passage portion of Khasra No. 183/1 by virtue of compromise but later on filed a suit No. 188/96 on 13.02.1996 alleging that the defendants - appellants were disturbing their possession on plot No. 189 by encroaching over the land in his possession bearing Khasra No. 189 which the plaintiff - respondent had surrendered in favour of the defendants - appellants in lieu of the land of Khasra No. 183/1. The plaintiff - respondent, ignoring this part, sought permanent injunction for restraining the defendants - appellants from the alleged encroachment at the instance of the defendant - appellant. He also sought alternative relief of handing over his land to him after removal of construction, if any, made by the appellants - defendants.

6. The Civil Judge (Junior Division) Dasuya who held the trial was pleased to dismiss the suit filed by the plaintiff - respondent against which the plaintiff - respondent preferred an appeal before the Additional District Judge (Adhoc) Fast Track Court, Hoshiarpur. But the first appellate court also was pleased to dismiss the appeal and upheld the judgment and order of the trial court dismissing the suit of the plaintiff - respondent. Both the courts below being the trial court as also the first appellate court, on a scrutiny of the evidence led by the contesting parties recorded a finding that Khasra No. 183/1 was a passage which lead to the Khasra Nos. 190, 191 and 192 in possession of the defendants which fact was also admitted by the plaintiff - respondent. It was further recorded by the trial court and the first appellate court that Khasra No. 189 was surrendered by the plaintiff - respondent to the defendants - appellants as the plaintiff - respondent had illegally raised construction on Khasra No. 183/1 which was the only passage for the defendants - appellants by way of entry and exit to his other plots bearing Khasra Nos. 190, 191 and 192. When this led to the dispute between the parties, the plaintiff - respondent had surrendered his plot No. 189 in favour of the defendants - appellants and, therefore, he had no right to allege subsequently against the defendants - appellants that they are illegally encroaching on this plot of land and disturbing the possession of the plaintiff - respondent which had been surrendered by the plaintiff - respondent to the defendants - appellants herein.

7. The plaintiff - respondent, however, challenged the judgment and order passed by the trial court and the first appellate court by filing a Regular Second Appeal No. 800/2005 before the High Court of Punjab and Haryana at Chandigarh and the learned single Judge of the High Court was pleased to reverse the concurrent findings of fact recorded by the two courts below and set aside the orders of dismissal of the suit filed by the plaintiff - respondent and allowed the second appeal which amounts to decreeing the suit in favor of the plaintiff - respondent. The learned single Judge was pleased to allow the second appeal as he refused to recognize the compromise/settlement made between the plaintiff and the respondents before the police authorities at the instance of the Gram Panchayat which in effect means that the High Court failed to take notice of the out of court settlement between the parties as a result of which the plaintiff -respondent retained the portion of Khasra No. 183/1 and the defendants - appellants had been allowed to retain plot No. 189 which had been surrendered by the plaintiff - respondent to the defendants - appellants. The learned single Judge was also pleased to hold that the defendants - appellants in fact encroached upon plot No. 189 disturbing the possession of the plaintiff - respondent completely ignoring the position that in lieu of plot No. 189, the plaintiff - respondent had continued to retain their encroached structure on plot/Khasra No. 183/1 which admittedly did not belong to them.

8. However, the learned single Judge was pleased to allow the second appeal without even framing any substantial question of law in the second appeal which was not legally permissible in absence of any perversity in such findings of fact. Time and again, this Court has held in cases too numerous to mention that a second appeal in absence of substantial question of law cannot be held maintainable, yet the courts often tend to ignore this well-settled

legal proposition and indulge in re-appreciation of evidence disturbing the finding of fact recorded by the trial court and the first appellate court as it has happened in the instant case. In the process, the learned single Judge seems to have ignored the fact that if the compromise arrived at between the parties were not fit to be given effect to and no reliance could be placed on the same, the High Court could not have ignored that in that event the plaintiff - respondent also had no legal right to retain their encroached structure on Khasra No. 183/1 which was earlier used as a passage for the ingress and egress by the defendants - appellants on which the plaintiff - respondent had illegally raised construction and was also allowed to retain it by virtue of entering into a compromise with the defendants - appellants. If the High Court considered it appropriate not to place reliance on the compromise arrived at mutually between the contesting parties, the plaintiff - respondent ought to have been first of all directed to demolish their construction on Khasra No. 183/1 and thereafter could lay their claim on plot No. 189. But the High Court seems to have relied upon the compromise for allowing the respondent to retain their construction on plot No. 183/1 but further decreed the suit in favour of the respondent for Khasra No. 189 also completely ignoring that either the compromise could be accepted or had to be rejected in toto. The compromise could not have been relied upon in part for the benefit of the plaintiff - respondent by ignoring the other part which was in favour of the defendants - appellants. In any view, the learned single Judge while entertaining the second appeal had no legal basis to indulge into a scrutiny and re-appreciation of the evidence in absence of any perversity in the finding recorded by the trial court and the first appellate court and allowing the second appeal which has given rise to an inequitable and unjust order as the defendants - appellants in the wake of the decree passed by the High Court would be left with no other outlet/passage from their plots of land whereas the Respondent would be allowed to enjoy the encroachment on plot No. 183/1 and also retain disputed portion of plot No. 189 comprising 2 marlas which had been surrendered.

9. We are, therefore, of the view that the impugned judgment and order passed by the High Court is not fit to be sustained and hence we set aside the judgment and order passed by the High Court and restore that of the trial court and the first appellate court which had been pleased to dismiss the suit filed by the plaintiff - respondent. Accordingly, this appeal stands allowed but in the circumstance without any order as to costs.

.....J.
(G.S. Singhvi)

.....J.
(Gyan Sudha Misra)

New Delhi,
September 17, 2012

ITEM NO.201

COURT NO.5

SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).14616/2009

(From the judgement and order dated 12/02/2009 in RSA No.800/2005 of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

MOHINDER SINGH & ANR. Petitioner(s)

VERSUS

DEV RAJ Respondent(s)
(With appln(s) for exemption from filing O.T.,direction/stay)(for final disposal)

Date:17/09/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE GYAN SUDHA MISRA

For Petitioner(s) Mr. Shantanu Bhardwaj, Adv.
Mr. Dinesh Garg, Adv.

For Respondent(s) Mr. P.N. Puri, Adv.
Mr. Dhiraj, Adv.
Ms. Reeta Dewan Puri, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

| (Parveen Kr.Chawla)
| Court Master
|

| | (Phoolan Wati Arora)
| | Court Master
| |

[signed order is placed on the file]